

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Ted Bromfield on April 27, 2006

DATED: July 6, 2006

On April 27, 2006, Michael Schachter and Michael Shapiro, in Willkie Farr & Gallagher LLP's capacity as counsel to the Audit Committee, interviewed Ted Bromfield at the City Administration Building, 202 C Street, in San Diego, in a conference room on the third floor. Johnny Giang and Tammie Davis from KPMG also attended the interview. Mr. Bromfield was not represented by counsel.

The following memorandum reflects my thoughts, impressions, and opinions regarding our meeting with Ted Bromfield, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Warnings

Mr. Schachter informed Mr. Bromfield that we are counsel to the Audit Committee and do not represent him or any employee. He advised Mr. Bromfield that the interview may be considered attorney work product and confidential, but the decision of whether to keep it confidential will be made by the Audit Committee in the best interests of the City, not by Mr. Bromfield personally. Mr. Schachter said we will create a report which may contain statements of interviewees, and this report will likely be provided to KPMG and ultimately made public. He said government agencies may view the report and be provided with additional information so it is important to be truthful and accurate. Mr. Bromfield asked Mr. Schachter whether the City had waived attorney-client privilege and if so, up until when. Mr. Schachter said that the City waived attorney-client privilege up until either February or March 2004. Mr. Bromfield said he had no problem discussing issues up until that time period and said that in terms of the *Shames* litigation, he provided all of his materials to the City Attorney.

Background

Mr. Schachter asked Mr. Bromfield to discuss his background. Mr. Bromfield said that he graduated from law school in 1971 and began working for the City Attorney's Office after graduation. He worked in the Criminal Division until 1974 and in the Civil Rights Division from 1974 to 1975. From 1975 to 1985, he worked as the City prosecutor in the Criminal Division. From July 1, 1985, until his retirement, he worked in the water and sewer funds as their senior attorney.

Mr. Schachter asked Mr. Bromfield to describe his job responsibilities. He said that the Clean Water Act was approved in 1985 and went into effect in 1988, requiring secondary treatment at wastewater treatment facilities. Soon thereafter, the EPA filed a \$4 billion action against the City and Mr. Bromfield spent from 1988 until retirement litigating EPA claims about collection and treatment. He was able to obtain a consent decree in federal court allowing advanced primary treatment rather than secondary treatment at Point Loma. Mr. Bromfield worked to extend the outfall at Point Loma from 2.5 miles to 4 miles and also helped deal with issues regarding building reclamation plants at North City and South Bay. Because the issues were time consuming, he hired Kelly Salt (Chief Deputy City Attorney of the Public Works Section) to handle resolutions and contracts and Fritz Ortleib (City Attorney's Office) to deal with day-to-day issues. He hired Tom Zeleny (Deputy City Attorney) in 2001 to deal with contractual issues.

Wastewater

Involvement with Disclosure

Mr. Schachter asked Mr. Bromfield to discuss his involvement with disclosure. Mr. Bromfield responded that his major dealings with outside counsel involved providing write-up narratives to Orrick regarding the EPA case. Write-ups were limited to regulatory matters, communicated directly to Orrick, and copied to Salt. Salt was the principal lawyer regarding bond issuances and dealt with Tax Anticipation Notes ("TANS"), Balboa Park, water, and sewer bonds. Salt would speak with the lawyers involved with each issue that needed to be disclosed and ask for status updates. He would be shown a draft Preliminary Official Statement ("POS") and asked to check if the section about the EPA case was accurate. Exposure on the case would change month to month so he had to frequently provide updates. Les Girard, Executive Assistant City Attorney, was not copied on Bromfield's correspondence with Orrick. Girard would not send memos to Bromfield. Bromfield hired Girard in 1983 and is close friends with him.

The November 14, 2002 Memo

Mr. Bromfield was shown Exhibit 1, a November 14, 2002 memo from Mary Vattimo and Kelly Salt to the Honorable Mayor and City Council re: "Significant Exposure to Litigation: Metropolitan Wastewater Department's Compliance With Federal and State Loan and Grant Guidelines." Mr. Schachter asked Mr. Bromfield if he was involved in creating the memo. He did not recall. Mr. Bromfield's initials are not on the document and he noted that if he had a role in it, it would have the initials "TB" on it. He was dealing with the Surfrider/BayKeeper major spill case in 2002 and was principally involved with that, which he said might explain why he was not involved with this document.

Mr. Bromfield was shown Exhibits 2 and 3. Exhibit 2 is an August 18, 1995 memo from Hedy Griffiths to Bill Hanely re: "SWRCB Feedback - EPA Grant Project No. C-06-1092." Exhibit 3 is a September 13, 1995 letter from W. Norwood Scott to Richard Enriquez copying Joe Jung and Eddie Duenas re: "Meeting of August 9, 1995." Mr. Bromfield had no recollection of Exhibit 2 but remembered obtaining Exhibit 3 when he started to prepare the *Shames* defense. Regarding Exhibit 2, he said that Ron Blair (Revenue Program Specialist for the State Water Resources Control Board) was concerned about transfers out of the wastewater fund for right-of-way fees.

Right of Way

Mr. Bromfield was shown Exhibit 4, a June 18, 1996 memo from the City Attorney to Ed Ryan re: "Water and Sewer Fund Transfers for Use of City Rights-of-Way." Mr. Schachter asked Mr. Bromfield to explain the right of way issue. Mr. Bromfield said he had a "vivid recollection" of the issue. He noted that Exhibit 4 is the only substantive opinion on the issue. Fitzpatrick, who was the Assistant City Attorney dealing with the utilities in the late 1960's, had opined that the right-of-way charge was acceptable but had done so based on research from a legal intern. Mr. Bromfield was not comfortable with that but could not overrule Fitzpatrick. Mr. Bromfield also had a different view of the charge.

As the issue ripened and the City needed a formal opinion, Girard drafted one. It was known to Fitzpatrick and others than Mr. Bromfield was uncomfortable with the fee. Girard consulted with Mr. Bromfield when he wrote the new opinion. Mr. Bromfield wrote parts of it including the middle paragraph on page 6, "We are quick to caution..." Mr. Bromfield did not author the memo and was not comfortable with all of the reasoning in the opinion. There was a difference in opinion at the City Attorney's Office because the City Manager knew that other cities were imposing right-of-way fees and the State was asking whether it was legal. Mr. Schachter asked if right-of-way involved raiding other funds. He said that "raiding" is too strong a word to describe right-of-way fees but rather the issue from the standpoint of the City Manager was whether the City could transfer funds and if it was a legal charge.

Mr. Bromfield volunteered that Section 53 of the City Charter deals with the water fund but there is no comparable Charter section for the sewer fund. The City put restrictions on the sewer fund into § 64.04.03 of the Municipal Code so that sewer funds can only be used for capital improvements, operations and maintenance. The question in his mind about the right-of-way fee was whether there was a comparable benefit to the fund that would justify the expenditure. He "shot down" numerous projects because there was no benefit to the sewer fund, providing the example of a project to put children's swings on sewer land using sewer funds. Girard found that putting pipes in the ground was a benefit to the sewer fund but Mr. Bromfield believed there was a failure of consideration because the pipes had been in the ground since 1988.

Mr. Schachter asked Mr. Bromfield why the right-of-way charges began. Mr. Bromfield responded that the sewer fund revenues came in monthly and the City Manager saw the fund's surplus and wanted to use it for general fund purposes. The surplus was needed to deal with sewer problems. A grand jury looked into the right-of-way issue and said that it "looked to them like a raid." The right-of-way issue came to a head because it was stamped as legal but a grand jury asked the City Manager to justify it or "dump it." The City Manager decided to phase it out and Mr. Bromfield does not believe right-of-way transfers exist today.

Kelco

Mr. Bromfield was shown Exhibits 5, 6, 7, 8, 9, and 10:

- Exhibit 5 is a July 21, 1997 email from Susan Hamilton to Alan Langworthy re: "Kelco – Forwarded," attaching a July 15, 1997 email from Coleman Conrad re: "Kelco."
- Exhibit 6 is an August 14, 1997 email from Ted Bromfield to CAB7-9.CITY_MGR(CC1), cc'ing MWWD.MW_METRO(WZH) re: "Total Suspended Solids Rate Reduction – Forwarded – Reply," attaching an August 14, 1997 email from Steve Zapotieczny to cab7-9.city_mgr(CC1) re: "Total Suspended Solids Rate Reduction."
- Exhibit 7 is an August 18, 1997 email from Bill Hanley to Alan Langworthy re: "Kelco," attaching an August 14, 1997 email from Coleman Conrad re: "Kelco."
- Exhibit 8 is a September 9, 1997 fax cover sheet from Corinne Smith to Ted Bromfield re: Kelco's sewer classification, attaching an August 25, 1997 letter from David Schlesinger to David McKinley re: Kelco's classification.
- Exhibit 9 is an October 10, 1997 email from Coleman Conrad to Steve Zapotieczny re: "Kelco Third Quarter TSS Readings."
- Exhibit 10 is an August 14, 1997 email from Ted Bromfield to RLL, CCB, CWY, AXL, wzh, copying CC1, D5S, and SCH re: "Kelco."

Mr. Schachter asked Mr. Bromfield why Kelco appeared to be receiving money from the City. Mr. Bromfield said that he recalled an issue in 1997 where Kelco, the City's third largest discharger, expressed concern to the City Manager about overbilling and receiving money for pretreatment installation. The Manager inquired as to whether Kelco could receive a rebate, a loan or money. The Metropolitan Wastewater Department ("MWWD") worked directly with Kelco on a loan/rebate plan but it had to be legally blessed. Mr. Bromfield was consulted on whether or not it had a direct benefit to the sewer system and he received a memo from Alan Langworthy (Deputy Director, MWWD) that said that Kelco reduced TSS (total suspended solids; the solid particles that suspended in wastewater and do not settle out) through pretreatment, thus demonstrating a benefit to the system. Mr. Bromfield had no recollection that the rebate/loan to Kelco rose to Council action or that any input from Council was received. It was as a result of a direct request from Coleman Conrad (Deputy City Manager) and it was based strictly on Kelco showing it paid x using category y but now qualified for paying y. Mr. Bromfield remembered being very careful to make sure that the legal test was followed, i.e., a direct benefit to the wastewater system was provided.

Mr. Schachter asked Mr. Bromfield why he used the word "creative" in Exhibit 6, an August 14, 1997 email from Ted Bromfield to CAB7-9.CITY_MGR(CC1), copying MWWD.MW_METRO(WZH) re: "Total Suspended Solids Rate Reduction – Forwarded –

Reply,” attaching an August 14, 1997 email from Steve Zapotieczny to cab7-9.city_mgr(CC1) re: “Total Suspended Solids Rate Reduction.” Mr. Bromfield said he meant that they were all sensitive to the fact that the City was business-friendly if justifiable. Pretreatment is good public policy and benefited the system directly. A similar situation arose in 1991 when the City paid direct compensation to all residents who put in low-flow toilets.

Regarding Exhibit 8, a September 9, 1997 fax cover sheet from Corinne Smith to Ted Bromfield re: Kelco’s sewer classification, attaching an August 25, 1997 letter from David Schlesinger to David McKinley re: Kelco’s classification, Mr. Schachter asked who is Corinne Smith. Mr. Bromfield said that Corinne Smith is the Classification Supervisor at the Water Department and also deals with sewer. The document is a “puzzlement” because he could not and would not tell her what to charge Kelco. Smith was concerned that no one should get special treatment. Mr. Bromfield had no independent recollection of the situation. He believed it dealt with compensation proposed for Kelco. Langworthy’s memo said that as a result of pretreatment mechanisms, Kelco had achieved reductions in TSS and thus could get credit against future billings or a rebate.

Regarding Exhibit 9, an October 10, 1997 email from Coleman Conrad to Steve Zapotieczny re: “Kelco Third Quarter TSS Readings,” he said that Zapotieczny is an executive at Kelco. Mr. Schachter asked Mr. Bromfield why the word “loan” is in quotes. Mr. Bromfield responded that having the word “loan” in quotes is a legal red flag to him and he did not know why it was used. If it was a loan, it needed authorization and may have needed Council action. He described the authorization issue as “huge” and that he would be “very very uncomfortable” if a department director or City Manager could make loans of public funds. He would have had to research the issue of authority to do such a thing and had not been asked if the City could make a loan to one company. Mr. Bromfield said that if the City provided a loan to Kelco but not to other businesses, it would be like the City providing a loan to Willkie and not to Gray Cary. Mr. Bromfield volunteered that Charter Section 31 provides for restrictions on the advancement of funds. Mr. Schachter asked Mr. Bromfield what “push the envelope” in Exhibit 9 meant. He said that the phrase “push the envelope” meant that the City wanted to be business-friendly to the third-largest discharger, Kelco.

Mr. Schachter asked Mr. Bromfield about Kelco’s influence regarding the rate structure issue. Mr. Bromfield said that it appeared to him that during the 2003 organics discussion, the Council and Mayor were influenced by Kelco, but he never had that impression from any Closed Session or hearing. He received the impression from attending meetings of the citizen’s oversight committee that reviewed rates. He heard Dennis Kahlie and others talking about “plodding along” regarding organics and he got the impression that there was a concern about it by the Mayor and Council.

Mr. Bromfield was then shown Exhibits 11-19:

- Exhibit 11 is a May 19, 1999 letter from Ted Bromfield to Dorothy Jones cc’ing Jenna Magan, William Hanley, Richard Enriquez and Mary Vattimo re: “San Diego State Revolving Fund Contract.”
- Exhibit 12 is a Ordinance Number 18655 adopted on June 21, 1999.

- Exhibit 13 is a September 17, 1999 memo from William Hanley to Dennis Kahlie re: "SRF Loan Document Issues."
- Exhibit 14 is a November 15, 1999 draft memo from City Attorney to Councilmember Christine Kehoe re: "Sewer Cost-of-Service Report."
- Exhibit 15 is a November 15, 1999 memo from Ted Bromfield to Casey Gwinn re: "Councilmember Kehoe's Memo on Sewer Cost-of-Service Report."
- Exhibit 16 is an October 6, 1999 memo from George Loveland to the Honorable Mayor and City Council re: "Water and Sewer Cost of Service Studies," attaching a May 14, 1998 Cost of Service Study ("COSS").
- Exhibit 17 is a November draft memo from Ted Bromfield to Christine Kehoe re: "Sewer Service Fees and Proposition 218."
- Exhibit 18 is a November 24, 1999 email from Ted Bromfield to Casey Gwinn copying Jim Chapin, Kelly Salt, Kerri Katz, and Theresa McAteer re: "Ms. Kehoe's Request for 218 Opinion on Sewer Rates."
- Exhibit 19 is a December 22, 1999 memo to File from Ted Bromfield re: "Ms. Kehoe's Request for 218 Analysis on the Cost of Service Report."

Compliance with the State Guidelines

Mr. Schachter asked Mr. Bromfield if he was aware of State guidelines regarding organics. Mr. Bromfield said he was the principal negotiator for the metro agreements for the Participating Agencies ("PA's"), so he is aware of the need to be proactive to include strength-based billing ("SBB"). Wearing his "Shames hat," the defense attorney position on the issue was that the organics requirement is a State guideline and only a suggestion. If he was giving the client advice and the exposure was \$370 million, he would tell the client either to comply with the State Board or "take on" the Board. He said Salt's memo is good proactive advice. The *Shames* case's second cause of action is that the State loan contracts were violated. The City filed a demurrer that the contracts were not violated. Mr. Bromfield said he has the understanding that allocating organics for the PA's is part of the State guidelines. He would have no authority and would not advise the client to take on the State Board. There were specific directives from the State to the MWWd to fix organics for the PA's. Mr. Schachter asked Mr. Bromfield whether the State knew the City users were not being billed for organics and whether Mr. Bromfield knew that as well. Hanley told him of ongoing dialogue with the State in which the State wanted to see City users billed for organics but there was no demand and no threat. He had no knowledge that the State was aware that the City was not billing based on organics. Mr. Bromfield said that he knew that City users were not being billed for organics.

Mr. Schachter asked Mr. Bromfield what he would have said in 1998 if he were asked whether the City was in compliance with the State's guidelines. Mr. Bromfield said that if he were asked in 1998 whether the City was compliant with the State's view of its requirements,

he would say "no." He had no knowledge that the State was aware that the City was not billing based on organics.

State Revolving Fund ("SRF") Loans

Regarding Exhibit 11, a May 19, 1999 letter from Ted Bromfield to Dorothy Jones copying Jenna Magan, William Hanley, Richard Enriquez and Mary Vattimo re: "San Diego State Revolving Fund Contract." Mr. Schachter asked Mr. Bromfield why he was corresponding with the State. Mr. Bromfield stated that originally San Diego could not have SRF loans because of conflicts with the City Charter. He tried to fit the Charter restrictions within the SRF loan guidelines and had a dialogue with Dorothy Jones, an attorney at the SWRCB, including a face to face meeting, to resolve the Charter issues. He noted that Jones was concerned about the contract provision regarding having a designated source of revenue, not about organics.

Mr. Schachter asked Mr. Bromfield about his involvement in reviewing SRF loan contracts. He did not recall reviewing SRF loan contracts. He knew from his work on *Shames* that there was a provision in the SRF contracts that the user charge system must comply with SWRCB requirements but did not know about the provision in 1999. Mr. Bromfield had seen grant applications back to the 1980's and there were always sections included about the need to comply with all federal regulations. The SRF provisions stated that the City "will develop" a rate structure.

Regarding Exhibit 13, a September 17, 1999 memo from William Hanley to Dennis Kahlie re: "SRF Loan Document Issues," Mr. Schachter asked Mr. Bromfield why this document was written. He said that he had no role in preparing this memo. He explained that MWWD was trying to fit within the SRF rules. Kahlie was heavily involved in bond issuances and was getting an update from Hanley about the issues. It appeared to just deal with SRF. Mr. Bromfield thought that Hanley was responding to Kahlie or to a memo from Montague & DeRose, the financial advisor to the City on the bond issuance. He had the impression that Kahlie had asked the consultants if they had any "heartburn" over additional levels of debt. From his work on *Shames*, he had the impression that there was a mixed message. He said he is a big believer in Hanley's integrity and said that Hanley had told him of an ongoing dialogue with the State and that the City was working toward compliance.

Councilwoman Kehoe and COSS v Proposition 218

Regarding Exhibit 14, a November 15, 1999 draft memo from City Attorney to Councilmember Christine Kehoe re: "Sewer Cost-of-Service Report," he said he saw the findings of the COSS but that was not the question he was asked by Kehoe so he did not focus on it. Proposition 218 passed in November 5, 1996, and it became effective in July 1997.

Regarding Exhibit 16, an October 6, 1999 memo from George Loveland to the Honorable Mayor and City Council re: "Water and Sewer Cost of Service Studies," attaching a May 14, 1998 COSS, Mr. Schachter asked Mr. Bromfield to describe his involvement with the COSS. Mr. Bromfield said that by and large he was not in the loop regarding the COSS and that Kahlie's office was deeply involved with it. He noted that the COSS said that the rate structure needed to be changed. He stated that it required a resolution by Council to do a COSS.

Mr. Schachter asked Mr. Bromfield to explain why an October 1999 memo was used to release a May 1998 COSS. Mr. Bromfield replied that he has "no light" on the timing issues Exhibit 16 raises. He did not know when the City Manager received the COSS. Mr. Schachter asked Mr. Bromfield when he first saw the May 1998 COSS. He replied that the first time he saw the May 1998 COSS was when Kehoe said she received it and asked whether it was consistent with Proposition 218. Mr. Schachter asked Mr. Bromfield if the COSS had been completed prior to October 1999. He replied that he knew the COSS was in process but did not know it had been completed a year earlier. He volunteered that he had not reviewed the COSS prior to Kehoe's request but called Kahlie to get a COSS when he received her request. He clarified that he received the request from Kehoe on November 3, 1999, and met with her. Kehoe told him that she received the COSS and asked him if it violated 218. She did not want a legal opinion but the City Manager promised to give her a timeline on updates to the COSS. Mr. Bromfield volunteered that the guidelines are explicit about organics but 218 is a "whole other thing." There was an open debate regarding whether 218 applied to sewer rates. Mr. Schachter asked Mr. Bromfield whether Proposition 218 has a relationship to organics. He responded that Proposition 218 has "nothing" to do with organics.

Regarding Exhibit 17, a November draft memo from Ted Bromfield to Christine Kehoe re: "Sewer Service Fees and Proposition 218," Mr. Schachter asked why the noncompliance issue was not discussed in greater detail. Mr. Bromfield responded that he was not focused on the issue of whether the State guidelines required a revised rate structure in November 1999. *The choice in his mind was either to comply or to take on the State Board.* The Clean Water Act required secondary treatment but had exemptions. San Diego was the only municipality to take on the EPA regarding secondary treatment and saved billions by doing so. Absent taking on the State Board, organics was a requirement. He said that on page 6, paragraph 3, he raised the point about the organics issue because he wanted to make sure that the organics issue was brought to someone's attention.

Regarding Exhibits 18, a November 24, 1999 email from Ted Bromfield to Casey Gwinn copying Jim Chapin, Kelly Salt, Kerri Katz, and Theresa McAteer re: "Ms. Kehoe's Request for 218 Opinion on Sewer Rates," and Exhibit 19, a December 22, 1999 memo to File from Ted Bromfield re: "Ms. Kehoe's Request for 218 Analysis on the Cost of Service Report," Mr. Bromfield said that Keri Katz (City Attorney's Office) was Bromfield's supervisor and that both of them met with Kehoe and let Casey Gwinn (City Attorney) know the results of the meeting. *He did not recall meeting with Kehoe. He had a firm opinion about Proposition 218 that it did not apply to sewer rates but his opinion was untested at the time.* In July 2001, Salt issued an opinion that 218 did not apply to sewer rates. Regarding Exhibit 18, he volunteered the City had not received a demand from the State and the issue was not raised by Kehoe.

Mr. Bromfield was shown Exhibits 20, 21, 22 and 23:

- Exhibit 20 is an October 17, 2001 email from Scott Tulloch to Bill Hanley and Dennis Kahlie re: "Fwd: Well Done," attaching an October 16, 2001 email from Casey Gwinn to Scott Tulloch re: "Well Done."
- Exhibit 21 is an October 18, 2001 email from Kelly Salt to Ed Ryan, Dennis Kahlie, Mary Vattimo, Casey Gwinn, Keri Katz, Ted Bromfield, George Loveland, Patricia Frazier, Paul Webber, Scott Tulloch and Bill

Hanley re: "Sewer Cost of Service Study and Prop 218," attaching a July 31, 2001 memo from the City Attorney to George Loveland re: "The Application of Article XIID to Water, Sewer, and Storm Water Fees."

- Exhibit 22 is Ordinance Number 19012, adopted November 19, 2001.
- Exhibit 23 is a February 13, 2002 email from Virginia Magan to unnamed recipients re: "1999 San Diego Sewer – Official Statement – Request for Updates."

Regarding Exhibit 20, an October 17, 2001 email from Scott Tulloch to Bill Hanley and Dennis Kahlie re: "Fwd: Well Done," attaching an October 16, 2001 email from Casey Gwinn to Scott Tulloch re: "Well Done," Mr. Bromfield said that he did not recall what Gwinn is referring to. A hearing on rate increases was taking place and he was aware that the billing had not been changed by 2001. Mr. Schachter asked *why the billing had not yet been changed* and why the original consultants for the COSS were replaced. Mr. Bromfield responded that he did not know. In April 2001, Surfrider and Baykeeper sued based on the collection system and wanted millions of dollars in upgrades. Mr. Bromfield wanted to settle the suit to keep the EPA from getting involved.

Regarding Exhibit 21, an October 18, 2001 email from Kelly Salt to Ed Ryan, Dennis Kahlie, Mary Vattimo, Casey Gwinn, Keri Katz, Ted Bromfield, George Loveland, Patricia Frazier, Paul Webber, Scott Tulloch and Bill Hanley re: "Sewer Cost of Service Study and Prop 218," attaching a July 31, 2001 memo from the City Attorney to George Loveland re: "The Application of Article XIID to Water, Sewer, and Storm Water Fees," he said that a MOL is a memorandum of law and here it refers to Salt's memo regarding 218. Salt concluded that 218 did not apply to the sewer rate structure but felt that the City should comply with the 218 noticing requirements and be proactive anyway. Kahlie was inquiring as to whether they would need to re-notice under Proposition 218 when the COSS was issued, but Bromfield did not recall the discussion. He assumed that December 2001 was when Kahlie expected the COSS to be done and that the rates would be changed after that.

Mr. Bromfield was shown Exhibits 24, 25, 26, 27, and 28:

- Exhibit 24 is an April 24, 2003 memo from City Attorney to Eric Adachi, Jenna Magan and Bill Hanley re: "Revised POS for 2003 Sewer Revenue Bonds."
- Exhibit 25 is a June 6, 2003 email from Darlene DeRose to Daniel Deaton, William Webster, Andy Mukerji, Beth Fernando, Bryon Rockwell, Carol O'Hanlon, Chia Yang, Clay Bingham, Dennis Kahlie, Ed Burdett, Edward Wochaski, Eric Adachi, Eric Tashman, Grace Barvin, Jack Anderson, John Costagliola, karmstrong@kbcap.com, Kelly Salt, Krishna Pettitt, Mark Adler, Mary Vattimo, Raymond Day, Stepan Haytayan, Ted Bromfield, Tom Innis, Wesley Ogburn and William Hanley, copying Paul Webber, Virginia Magan and Larry Sobel re: "City of San Diego Wastewater – Revised Preliminary Official Statement."

- Exhibit 26 is a June 9, 2003 email from Eric Adachi to Dennis Kahlie re: "Fwd: City of San Diego -- Revised 2003 Supplement," forwarding a June 3, 2003 email and attachment from Ted Bromfield to Daniel Deaton, Kelly Salt, Eric Adachi, Scott Tulloch and Bill Hanley re: "City of San Diego Wastewater -- Revised 2003 Supplement."
- Exhibit 27 is a June 11, 2003 email from Paul Webber to William Webster, Andy Mukerji, Beth Fernando, Bryon Rockwell, Carol O'Hanlon, Chia Yang, Clay Bingham, Darlene DeRose, Dennis Kahlie, Ed Burdett, Edward Wochaski, Eric Adachi, Eric Tashman, Grace Barvin, Jack Anderson, John Costagliola, karmstrong@kbcap.com, Kelly Salt, Krishna Pettitt, Mark Adler, Mary Vattimo, Raymond Day, Stepan Haytayan, Ted Bromfield, Tom Innis, Wesley Ogburn and William Hanley, copying Paul Webber, Virginia Magan, Larry Sobel and Daniel Deaton re: "City of San Diego – Wastewater System, Sewer Revenue Bonds, Series 2003 – Revised POS."
- Exhibit 28 is a June 30, 2003 email from Bill Hanley to Ted Bromfield re: "Fwd: Follow-up Questions."

The 2003 Preliminary Official Statement

Regarding Exhibit 24, an April 24, 2003 memo from City Attorney to Eric Adachi, Jenna Magan and Bill Hanley re: "Revised POS for 2003 Sewer Revenue Bonds," Mr. Bromfield volunteered that the paragraph on page 3 came from the earlier Preliminary Official Statement ("POS") and he was reading it editorially, not substantively. He knew the review discussed did not occur annually and instead occurred periodically, so he made that editorial change. Mr. Schachter asked Mr. Bromfield why he did not change the other language to reflect the City's noncompliance. He replied that he did not consider the lack of compliance at the time. Since Hanley had told him that Hanley was having an ongoing dialogue with the State, it did not register as a compliance issue for him. He would have assumed Salt reviewed the POS and typically he would send his comments directly to Jenna Magan at Orrick without consulting Salt. He volunteered that he did not know of Kahlie's January 29, 2002 presentation and did not know of the Salient Points nor of Salt's preparation of her memo. Mr. Schachter asked Mr. Bromfield if he was aware of a November 19, 2002 Closed Session and that it was cancelled. He replied that he was not. During this time period, he was working on a sewer spills class action full time. Salt was working directly with Kahlie on disclosure issues. Compliance issues were "not in his area" and he had only one conversation with Salt regarding the lack of disclosure of noncompliance. She said at the time that there was no default notice from the State regarding the noncompliance so there was no need for disclosure.

Mr. Schachter asked Mr. Bromfield how the language concerning that "no grant funds or costs under grant funded programs have been disallowed based on the nature of the rate structures" was placed into the POS. He did not know how it got into the POS in 1993 and he assumed either bond counsel, Salt, or Kahlie wrote it. He is "pretty sure" Hanley did not write it.

Orrick Awareness of Noncompliance

Mr. Schachter asked Mr. Bromfield whether Orrick was aware of the noncompliance with the State's requirements. He said that Kahlie thought that Orrick knew that the City was not in compliance with State requirements and could have to repay \$370 million. Mr. Bromfield thought that Orrick knew that organics were not part of the rate structure. However, he had no personal knowledge that Orrick knew that the City's rate structure was not in compliance with State requirements. A document drafted by Kahlie was the only information he had that indicated that Orrick knew. No one told him the noncompliance was brought to Orrick's attention.

Regarding Exhibit 25, a June 6, 2003 email from Darlene DeRose to Daniel Deaton, William Webster, Andy Mukerji, Beth Fernando, Bryon Rockwell, Carol O'Hanlon, Chia Yang, Clay Bingham, Dennis Kahlie, Ed Burdett, Edward Wochaski, Eric Adachi, Eric Tashman, Grace Barvin, Jack Anderson, John Costagliola, karmstrong@kbcap.com, Kelly Salt, Krishna Pettitt, Mark Adler, Mary Vattimo, Raymond Day, Stepan Haytayan, Ted Bromfield, Tom Innis, Wesley Ogburn and William Hanley, cc'ing Paul Webber, Virginia Magan and Larry Sobel re: "City of San Diego Wastewater – Revised Preliminary Official Statement," Mr. Bromfield said that he typically participated in conference calls where he would provide his EPA update and then leave the call. Mr. Schachter asked Mr. Bromfield if he recalled any discussions about the rate structure on these calls. He responded that he did not discuss the rate structure and he did not know if noncompliance was ever discussed in meetings or on calls with Orrick. The 1993 meetings regarding the POS were page turners but did not recall what happened for 1999.

Disclosure to Rating Agencies

Mr. Bromfield was shown Exhibits 29 and Exhibit 30. Exhibit 29 is a July 1, 2003 email from Dennis Kahlie to Ted Bromfield, Eric Adachi, Clay Bingham and Bill Hanley re: "Proposed Responses to Fitch's Questions," attaching a redline draft of "Proposed Responses to Fitch's Questions." Exhibit 30 is a July 1, 2003 email from Bill Hanley to Mark Capell, Dennis Kahlie and Eric Adachi re: "Follow-up Questions," attaching a document entitled, "Responses to Follow-up Questions." Mr. Bromfield remarked that Question No. 3 of Exhibit 29 (which discusses the rate structure having not been disallowed by the State) "seems to mimic the POS." Mr. Schachter asked Mr. Bromfield if he reviewed #3 and why he did not change the language in #3. He replied that Kahlie or Eric Adachi asked him to respond to certain questions, #1, 4, and 5, and he did not recall reviewing #3. He was not asked for his input regarding #3. The review was time sensitive and he did not recall discussing #3.

SWRCB Demands Compliance

Mr. Bromfield was shown Exhibit 31, a December 8, 2003 email from Keri Katz to Anita Noone, Kelly Salt, Les Girard and Ted Bromfield re: "Fwd: SWRCB Response." Mr. Schachter asked Mr. Bromfield to discuss what was happening at the time of this e-mail regarding noncompliance. He responded that by November 2003, the SWRCB did not have a record of compliance and was now requesting the City forward same. He had no participation in responding to the State regarding this issue. The EPA case was full time and he was working on it twelve hours a day. No one communicated with him that that was no need to change the rate structure. No one asked him how to respond to the State.

Clean Water Act

Mr. Bromfield was shown Exhibit 32, a February 17, 2004 email from Kelly Salt to Dan Deaton and Paul Webber re: "Clean Water Act." Salt would have asked him about the Clean Water Act. The NPDES permit that is referenced is a \$4B permit and if it were pulled, the City would have to go to secondary treatment.

Shames

Mr. Bromfield was shown Exhibit 33, a February 8, 2005 email from Ted Bromfield to Dennis Kahlie re: "Shames Deposition Response." Mr. Schachter asked Mr. Bromfield to explain this email. He replied that a deposition was set and requests for admission had not been responded to. He was scrambling. If the City admitted, they would be confessing judgment. If they denied, they could receive sanctions. The reference in the Exhibit to "given some statements" is to the Black & Veatch COSS. He said that the City needed to respond ethically but the question was how to genuinely approach it. "UCAN" is another name for the *Shames* litigation.

Mr. Bromfield was shown Exhibit 34, a July 27, 2005 email from Thomas Zeleny to Dennis Kahlie, Hedy Griffiths, Richard Enriquez, John Riley, Kelly Salt, and Ted Bromfield re: "UCAN lawsuit chronology," attaching a document entitled "Chronology of major events in adoption of organics component in City's sewer rate structure." Mr. Schachter asked Mr. Bromfield where he obtained the information for the entry of January 22, 2002, which states that a Closed Session meeting took place regarding the sewer rate structure on January 22, 2002. He said that he did not obtain the information regarding the January 22, 2002 entry; Zeleny did. He had already issued his resignation by this time. His last day was August 19, 2005, and he was packing boxes at the time of this email.

Conclusion

Mr. Schachter asked Mr. Bromfield if he was aware of any City employee doing anything improper or illegal. Mr. Bromfield said "no." Mr. Bromfield said he was a "fan" of Salt and Hanley and that both were "salt of the earth." Mr. Schachter asked Mr. Bromfield if there was any other information about which he felt we should be aware. Mr. Bromfield said "no" and that he stayed out of politics. Mr. Schachter requested that Mr. Bromfield keep the interview confidential to protect the integrity of the investigation.

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